

**Senator Jani Iwamoto** proposes the following substitute bill:

**DOMESTIC VIOLENCE AMENDMENTS**

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Jani Iwamoto**

House Sponsor: Paul Ray

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**LONG TITLE**

**General Description:**

This bill relates to the offense of commission of domestic violence in the presence of a child.

**Highlighted Provisions:**

This bill:

- defines terms;
- increases the penalty for the offense of commission of domestic violence in the presence of a child;
- modifies the circumstances under which the offense of commission of domestic violence in the presence of a child is subject to a penalty enhancement; and
- makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**76-5-109.1**, as last amended by Laws of Utah 2009, Chapter 70



26 **77-36-1.1**, as last amended by Laws of Utah 2019, Chapter 367

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28 *Be it enacted by the Legislature of the state of Utah:*

29 Section 1. Section **76-5-109.1** is amended to read:

30 **76-5-109.1. Commission of domestic violence in the presence of a child.**

31 (1) As used in this section:

32 (a) "Cohabitant" has the same meaning as defined in Section **78B-7-102**.

33 (b) "Domestic violence" has the same meaning as in Section **77-36-1**.

34 (c) "In the presence of a child" means:

35 (i) in the physical presence of a child; or

36 (ii) having knowledge that a child is present and may see or hear an act of domestic  
37 violence.

38 (2) ~~[A person]~~ An individual commits domestic violence in the presence of a child if  
39 the ~~[person]~~ individual:

40 (a) commits or attempts to commit criminal homicide, as defined in Section **76-5-201**,  
41 against a cohabitant in the presence of a child; or

42 (b) intentionally causes serious bodily injury to a cohabitant or uses a dangerous  
43 weapon, as defined in Section **76-1-601**, or other means or force likely to produce death or  
44 serious bodily injury against a cohabitant, in the presence of a child; or

45 (c) under circumstances not amounting to a violation of Subsection (2)(a) or (b),  
46 commits an act of domestic violence in the presence of a child.

47 (3) (a) ~~[A person]~~ An individual who violates Subsection (2)(a) or (b) is guilty of a  
48 third degree felony.

49 (b) ~~[A person]~~ An individual who violates Subsection (2)(c) is guilty of a class ~~[B]~~ A  
50 misdemeanor.

51 (4) A charge under this section is separate and distinct from, and is in addition to, a  
52 charge of domestic violence where the victim is the cohabitant. ~~[Either or both charges may be~~  
53 ~~filed by the prosecutor.]~~

54 (5) ~~[A person]~~ An individual who commits a violation of this section when more than  
55 one child is present is guilty of one offense of domestic violence in the presence of a child  
56 regarding each child present when the violation occurred.

57 Section 2. Section 77-36-1.1 is amended to read:

58 **77-36-1.1. Enhancement of offense and penalty for subsequent domestic violence**  
59 **offenses.**

60 (1) As used in this section:

61 (a) "Criminal mischief offense" means commission or an attempt to commit an offense  
62 under Section 76-6-106 by one cohabitant against another.

63 (b) "Domestic violence in the presence of a child offense" means commission or an  
64 attempt to commit an offense under Section 76-5-109.1.

65 [~~(b)~~] (c) "Qualifying domestic violence offense" means:

66 (i) a domestic violence offense in Utah; or

67 (ii) an offense in any other state, or in any district, possession, or territory of the United  
68 States, that would be a domestic violence offense under Utah law.

69 (2) An individual who is convicted of a domestic violence offense that is not a domestic  
70 violence in the presence of a child offense is:

71 (a) guilty of a class B misdemeanor if:

72 (i) the domestic violence offense described in this Subsection (2) is designated by law  
73 as a class C misdemeanor; and

74 (ii) (A) the domestic violence offense described in this Subsection (2) is committed  
75 within 10 years after the individual is convicted of a qualifying domestic violence offense that  
76 is not a criminal mischief offense; or

77 (B) the individual is convicted of the domestic violence offense described in this  
78 Subsection (2) within 10 years after the individual is convicted of a qualifying domestic  
79 violence offense that is not a criminal mischief offense;

80 (b) guilty of a class A misdemeanor if:

81 (i) the domestic violence offense described in this Subsection (2) is designated by law  
82 as a class B misdemeanor; and

83 (ii) (A) the domestic violence offense described in this Subsection (2) is committed  
84 within 10 years after the individual is convicted of a qualifying domestic violence offense that  
85 is not a criminal mischief offense; or

86 (B) the individual is convicted of the domestic violence offense described in this  
87 Subsection (2) within 10 years after the individual is convicted of a qualifying domestic

88 violence offense that is not a criminal mischief offense; or

89 (c) guilty of a felony of the third degree if:

90 (i) the domestic violence offense described in this Subsection (2) is designated by law  
91 as a class A misdemeanor; and

92 (ii) (A) the domestic violence offense described in this Subsection (2) is committed  
93 within 10 years after the individual is convicted of a qualifying domestic violence offense that  
94 is not a criminal mischief offense; or

95 (B) the individual is convicted of the domestic violence offense described in this  
96 Subsection (2) within 10 years after the individual is convicted of a qualifying domestic  
97 violence offense that is not a criminal mischief offense.

98 (3) An individual who is convicted of a domestic violence offense that is not a  
99 domestic violence in the presence of a child offense is:

100 (a) guilty of a class B misdemeanor if:

101 (i) the domestic violence offense described in this Subsection (3) is designated by law  
102 as a class C misdemeanor; and

103 (ii) (A) the domestic violence offense described in this Subsection (3) is committed  
104 within five years after the individual is convicted of a criminal mischief offense; or

105 (B) the individual is convicted of the domestic violence offense described in  
106 this Subsection (3) within five years after the individual is convicted of a criminal  
107 mischief offense;

108 (b) guilty of a class A misdemeanor if:

109 (i) the domestic violence offense described in this Subsection (3) is designated by law  
110 as a class B misdemeanor; and

111 (ii) (A) the domestic violence offense described in this Subsection (3) is committed  
112 within five years after the individual is convicted of a criminal mischief offense; or

113 (B) the individual is convicted of the domestic violence offense described in  
114 this Subsection (3) within five years after the individual is convicted of a criminal  
115 mischief offense; or

116 (c) guilty of a third degree felony if:

117 (i) the domestic violence offense described in this Subsection (3) is designated by law  
118 as a class A misdemeanor; and

119           (ii) (A) the domestic violence offense described in this Subsection (3) is committed  
120 within five years after the individual is convicted of a criminal mischief offense; or

121           (B) the individual is convicted of the domestic violence offense described in this  
122 Subsection (3) within five years after the individual is convicted of a criminal mischief offense.